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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD FREDRIK MICHAEL JOHNSON

Appeal 2010-006504
Application 09/769,294
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and BIBHU R. MOHANTY, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Ronald Fredrik Michael Johnson (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-3, 9, 10, 12-16, 18, 20, and 22-31, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented a way of real-time monitoring and control of inventory involved in on-line purchases (Specification 1: Field of the Invention).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

> 1. An inventory status and information system comprising:
>
> [1] a database,
>
> the database storing at least on-hand, reserved, and ordered inventory quantities
>
> associated with a plurality of inventory items;
>
> [2] a server,
>
> the server providing access to information from the database via a communication interface,
>
> the server also pushing out updates to inventory quantities as such inventory quantities change;
>
> [3] a client,
>
> the client providing a user interface

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[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed September 18, 2009) and the Examiner's Answer ("Ans.," mailed January 13, 2010).

through which information accessible via the server may be accessed and displayed,

the user interface further allowing a user to

view inventory quantities associated with a selected inventory item,

view inventory quantity updates provided by the server, and

place a specified quantity of the selected inventory item on reserve

as an order is placed.

The Examiner relies upon the following prior art:

Salvo	US 6,341,271 B1	Jan. 22, 2002
Peachey-Kountz	US 6,463,345 B1	Oct. 8, 2002

Claims 26-31 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1-3, 9, 10, 12-16, 18, 20, and 22-31 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Peachey-Kountz and Salvo.

ISSUES

The issue of statutory subject matter turns primarily on whether claim 26 only describes logic per se. The obviousness issues turn primarily on whether the Specification lexicographically defined the word "reserve."

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

01. The disclosure contains no lexicographic definition of "reserve."

Facts Related to the Prior Art

Peachey-Kountz

02. Peachey-Kountz is directed to a tool in which production planning information is used to match assets to demands. Peachey-Kountz 1:16-19.

03. Peachey-Kountz's customer orders (demands) are treated as inputs to generate a supply line at forecast group level. Each forecast group has supply allocated for it and determines which customers belonging to that group can consume the group's allocated supply. This allocation enables Peachey-Kountz to reserve some output for important customers, to insure that lower priority customers do not consume the output set aside for those important customers. As a result, Peachey-Kountz is superior to prior art available to promise (ATP) systems, which are constrained to allocating supply on a first come first served basis. Peachey-Kountz 6:7-19.

04. Peachey-Kountz uses an online server that interfaces directly to the order-entry system and maintains a real time picture of the orders. The order-entry systems are tied to the server using messaging middleware. Peachey-Kountz 6:58 – 7:1.

05. Peachey-Kountz uses inventory on-hand, on-order, and reserved quantity fields to compute the unallocated free supply available to meet a customer request. Peachey-Kountz 10:24-31.

Salvo

06. Salvo is directed to vendor managed inventory systems and methods. Salvo 1:5-7.

07. Salvo describes sending alerts concerning inventory levels to an inventory system from a server. Salvo 8:50-60.

ANALYSIS

Claims 26-31 rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

We are persuaded by the Appellant's argument that these claims recite more than logic per se, the Examiner's basis for the rejection at Answer 3. Appeal Br. 10. For example, polling a database requires more than logic per se.

Claims 1-3, 9, 10, 12-16, 18, 20, and 22-31 rejected under 35 U.S.C. § 103(a) as unpatentable over Peachey-Kountz and Salvo.

We are unpersuaded by the Appellant's argument that Peachey-Kountz's reservations differ from those in each of the independent claims. Appeal Br. 11-12. There is no lexicographic definition of "reserve" in the application. FF 01. The Appellant argues that its reservations allow customers to obtain assurance of availability in real-time. Appeal Br. 12. As the Examiner found at Answer 10, Peachey-Kountz does so, at least for some inventory. FF 03-05. We are also unpersuaded by the Declaration of Garrison Reeves Ellam Under 37 C.F.R. § 1.132 for the same reason, as that Declaration, providing evidence of commercial success, fails to show that such success would have occurred as measured relative to the applied prior art.

The Examiner failed to make findings as to the Declaration, however, and so, consistent with the recent decision in *In re Stepan*, -- F.3d --, 2011

WL 4582488 (Fed. Cir. 2011) in which our reviewing court held that such a referral by the Board for the first time to a Declaration was a new ground, we reverse the Examiner's art rejection, but enter a new ground on the same statutory basis and art under 37 C.F.R. § 41.50(b) to give the Appellant adequate notice.

CONCLUSIONS OF LAW

The rejection of claims 26-31 under 35 U.S.C. § 101 as directed to non-statutory subject matter is improper.

The rejection of claims 1-3, 9, 10, 12-16, 18, 20, and 22-31 under 35 U.S.C. § 103(a) as unpatentable over Peachey-Kountz and Salvo is improper based on the Examiner's findings, but proper under a new ground based on the same references and statutory basis.

DECISION

The Examiner's rejection of claims 1-3, 9, 10, 12-16, 18, 20, and 22-31 is reversed, but those same claims are rejected under 35 U.S.C. § 103(a) as unpatentable over Peachey-Kountz and Salvo as a new ground pursuant to 37 C.F.R. § 41.50(b).

This Decision contains a new rejection within the meaning of 37 C.F.R. § 41.50(b) (2007).

Our decision is not a final agency action.

37 C.F.R. § 41.50(b) provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new rejection:

> (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .
>
> (2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REVERSED; 37 C.F.R. § 41.50(b)

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